

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Mark Klasen,

Complainant,

vs.

Mark Dick, Robert Workman, and  
Maynard Workman,

Respondents.

**NOTICE OF DETERMINATION OF  
PRIMA FACIE VIOLATION  
AND  
NOTICE OF AND ORDER FOR  
EVIDENTIARY HEARING**

**TO: Mark Klasen, [address redacted], Hinckley, MN 55037; Mark Dick, [address redacted], Hinckley, MN 55037; Robert Workman, [address redacted], Hinckley, MN 55037; and Maynard Workman, [address redacted], Hinckley, MN 55037.**

On August 18, 2008, Mark Klasen filed a Complaint with the Office of Administrative Hearings alleging Respondent Mark Dick violated Minn. Stat. §§ 211B.04 (disclaimer), 211B.06 (false campaign material) and 211B.11 (election day prohibitions). The Complaint also alleged that Robert Workman and Maynard Workman violated Minn. Stat. § 211B.11 (election day prohibitions). After reviewing the Complaint and attached documents, the undersigned Administrative Law Judge has determined that the complaint sets forth prima facie violations of § 211B.11 with respect to Respondents Mark Dick and Robert Workman. The remaining allegations against Mark Dick are dismissed, and the complaint is dismissed in its entirety as to Respondent Maynard Workman.

**THEREFORE, IT IS ORDERED AND NOTICE IS GIVEN** that this matter will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota 55101, before three Administrative Law Judges. The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35. You will be notified of the date and time of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at [www.oah.state.mn.us](http://www.oah.state.mn.us) and [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: August 19, 2008

/s/ Richard C. Luis  
RICHARD C. LUIS  
Administrative Law Judge

## MEMORANDUM

The Complaint concerns the March 11, 2008, Barry Township election. Kathy Thompson and Mark Dick were candidates for Township Board.

The Complainant alleges that on the day of the election he encountered Robert Workman in the doorway of the building being used as the polling place for the township election. According to the Complaint, Robert Workman told the Complainant: "Don't vote for the woman, she doesn't know what she is doing." The Complainant also alleges that once he was inside the polling place, he encountered candidate Mark Dick who told the Complainant: "Vote for me." The Complainant then alleges that while he was filling out a voter registration card in the polling place, Maynard Workman, who was monitoring the Vote Ballot Box, asked him: "Who are you voting for?"

Minn. Stat. § 211B.11 governs election day prohibitions. Subdivision 1 of this section provides, in part, as follows:

**Subdivision 1. Soliciting near polling places.** A person may not display campaign material, post signs, ask, solicit, or in any manner try to induce or persuade a voter within a polling place or within 100 feet of the building in which a polling place is situated, on primary or election day to vote for or refrain from voting for a candidate or ballot question. . . .

If the evidence at a hearing were to establish by a preponderance of the evidence that Respondents Mark Dick and Robert Workman solicited votes or tried to

persuade the Complainant to vote for or refrain from voting for a candidate at or near the polling place, those facts would establish a violation of Minn. Stat. § 211B.11. The Administrative Law Judge therefore determines that the Complaint has alleged prima facie violations of Minn. Stat. § 211B.11 as against Respondents Mark Dick and Robert Workman. Those allegations will proceed to an evidentiary hearing before a panel of three Administrative Law Judges.

However, the allegation that the Respondent Maynard Workman asked the Complainant who he was voting for, while improper, does not support a prima facie violation of Section 211B.11 and is otherwise outside the jurisdiction of the Administrative Law Judge. The campaign complaint process is limited to alleged violations of Minnesota Statutes Chapters 211A and 211B. To ask a voter “who are you voting for,” standing alone, does not ask or solicit the voter to vote for or refrain from voting for a particular candidate. It is possible that this alleged conduct on the part of Respondent Maynard Workman may violate statutes or rules within the jurisdiction of the Minnesota Secretary of State, if Maynard Workman was an election judge. Because the conduct does not amount to a violation of Minn. Stat. § 211B.11 or any other provision of Chapters 211A or 211B, the Administrative Law Judge has no jurisdiction to consider this violation.

The Complainant also alleges that campaign material distributed by Mr. Dick lacked a disclaimer in violation of Minn. Stat. § 211B.04. On April 26, 2006, the Minnesota Court of Appeals issued its decision in *Riley v. Jankowski*,<sup>1</sup> holding that the disclaimer requirement of Minnesota Statutes § 211B.04 violates the First Amendment of the U.S. Constitution by directly regulating the content of pure speech and that there is no way to narrowly construe the statute to avoid the constitutional violation. Because the Minnesota Court of Appeals has determined that Minn. Stat. § 211B.04 is unconstitutional on its face, this allegation is dismissed.

Finally, the Complaint alleges that Respondent Mark Dick distributed false campaign material in violation of Minn. Stat. § 211B.06. This statute prohibits a person from intentionally preparing or disseminating false campaign material that the person knows is false or communicates to others with reckless disregard of whether it is false. The Complainant, however, has failed to provide a copy of the flyer or identify with any specificity what statements in the flyer were allegedly false. For purposes of a prima facie determination, the Complainant must detail the factual basis to support a claim that the violation of law has occurred.<sup>2</sup> A complaint alleging a violation of Minn. Stat. § 211B.06 must identify what statements are false and the knowledge or reckless disregard on the part of the person(s) who prepared or disseminated the campaign material. For these reasons, the Complaint fails to identify a prima facie violation of Minn. Stat. § 211B.06 and therefore is dismissed.

Pursuant to Minnesota Statutes § 211B.33, subd. 2(d), this matter shall be set on for an evidentiary hearing before a panel of three administrative law judges to consider the election day prohibition claims made under Section 211B.11. An order scheduling

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<sup>1</sup> 713 N.W.2d 379, 401 (Minn. App. 2006), *rev. denied* (Minn. July 20, 2006).

<sup>2</sup> Minn. Stat. § 211B.32, subd. 3.

this matter for a telephone prehearing conference and an evidentiary hearing will be issued shortly.

R.C.L.